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APPLICATION NO.	FILING D	ATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,259 12/04/2003		003	David S. Keppel	2878	7800
- 50855	7590	0/24/2006		EXAM	INER
UNITED STATES SURGICAL,			PEFFLEY, N	IICHAEL F	
A DIVISION OF TYCO HEALTHCARE GROUP LP 195 MCDERMOTT ROAD			ART UNIT	PAPER NUMBER	
NORTH HAVEN, CT 06473		3739			

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action				
Before the Filing of an Appeal Brief				

Application No.	Applicant(s)
10/728.259	KEPPEL, DAVID S
Examiner	Art Unit
Michael Peffley	3739

Advisory Action	10/728.259	KEPPEL, DAVID S			
Before the Filing of an Appeal Brief	Examiner	Art Unit			
	Michael Peffley	3739			
The MAILING DATE of this communication app	ears on the cover sheet with the	correspondence add	ress		
THE REPLY FILED 06 October 2006 FAILS TO PLACE THIS					
1 The reply was filed after a final rejection, but prior to or of this application, applicant must timely file one of the folk places the application in condition for allowance; (2) a N a Request for Continued Examination (RCE) in compliant time periods.	on the same day as filing a Notice of pwing replies (1) an amendment, af lotice of Appeal (with appeal fee) in nice with 37 CFR 1.114. The reply m	Appeal. To avoid aba fidavit, or other eviden compliance with 37 CI	ce, which FR 41 31, or (3)		
The period for reply expires 3 months from the mailing date of the final rejection The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection Examiner Note. If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).					
Extensions of time may be obtained under 37 CFR 1 136(a). The dat have been filed is the date for purposes of determining the period of e under 37 CFR 1 17(a) is calculated from (1) the expiration date of the set forth in (b) above if checked. Any reply received by the Office lat may reduce any earned patent term adjustment. See 37 CFR 1 704(INOTICE OF APPEAL	e on which the petition under 37 CFR 1 extension and the corresponding amount shortened statutory period for reply origer than three months after the mailing date)	of the fee. The appropri jinally set in the final Offic ite of the final rejection, e	ate extension fee be action, or (2) as even if timely filed		
2 The Notice of Appeal was filed on A brief in comfiling the Notice of Appeal (37 CFR 41.37(a)), or any ext a Notice of Appeal has been filed, any reply must be file.	ension thereof (37 CFR 41.37(e)), to	o avoid dismissal of the	s of the date of e appeal. Since		
AMENDMENTS 3 The proposed amendment(s) filed after a final rejection (a) They raise new issues that would require further c (b) They raise the issue of new matter (see NOTE bel (c) They are not deemed to place the application in beappeal, and/or	ionsideration and/or search (see NO low); etter form for appeal by materially re	TE below), educing or simplifying t			
(d) They present additional claims without canceling a NOTE: <u>See Continuation Sheet</u> . (See 37 CFR 1.4 The amendments are not in compliance with 37 CFR 1.	116 and 41.33(a)). 121. See attached Notice of Non-Co		PTOL-324).		
 Applicant's reply has overcome the following rejection(s). Newly proposed or amended claim(s) would be non-allowable claim(s). 	allowable if submitted in a separate,				
7 > For purposes of appeal, the proposed amendment(s) a how the new or amended claims would be rejected is pr. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to) 🗵 will not be entered, or b) 🗌 will ovided below or appended	ill be entered and an e	xplanation of		
Claim(s) rejected 1-21 Claim(s) withdrawn from consideration AFFIDAVIT OR OTHER EVIDENCE					
8 The affidavit or other evidence filed after a final action, to because applicant failed to provide a showing of good a was not earlier presented. See 37 CFR 1.116(e).	nd sufficient reasons why the affida-	vit or other evidence is	necessary and		
The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).					
10 The affidavit or other evidence is entered. An explanati REQUEST FOR RECONSIDERATION/OTHER	on of the status of the claims after e	entry is below or attach	ed.		
11 The request for reconsideration has been considered by	out does NOT place the application i	n condition for allowar	nce because		
12 ⊠ Note the attached Information Disclosure Statement(s) 13 ☐ Other:	. (PTO/SB/08) Paper No(s) <u>10/6/06</u>	Michael-Peffley Primary Examiner An Unit: 3739			

U.S. Patent and Trademark Office PTOL-303 (Rev. 08-05)

Advisory Action Before the Filing of an Appeal Brief

Pan of Paper No 20051018

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)
10/728,259	KEPPEL, DAVID S.
Examiner	Art Unit
Michael Peffley	3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --THE REPLY FILED 06 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. 1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) The period for reply expires <u>3</u> months from the mailing date of the final rejection. b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL . A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of 2. The Notice of Appeal was filed on filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). **AMENDMENTS** 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s): 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. No For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 1-21. Claim(s) withdrawn from consideration: _____. AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 10/6/06 13. Other: ____. Michael Peffley Primary Examiner Art Unit: 3739

Continuation of 3. NOTE: The independent claims now recite limitataions which differ from the limitations of dependent claims 5 and 14 and would require further consideration and search.